

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6376 OF 2017

Ravindra Balwant Surve. ...Petitioner.
Versus
The Secretary, Deccan Education Society
Pune and Others. ..Respondents.

WITH
WRIT PETITION NO. 6377 OF 2017

Vinodhini Ganesh Alawani. ...Petitioner.
Versus
The Secretary, Deccan Education Society
Pune and Others. ..Respondents.

WITH
WRIT PETITION NO. 6423 OF 2017

Dr. Vidya Suhas Talwalkar. ...Petitioner.
Versus
The Secretary, Deccan Education Society
Pune and Others. ..Respondents.

WITH
WRIT PETITION NO. 6421 OF 2017

Dr. Arun Prabhakar Pujari. ...Petitioner.
Versus
The Secretary, Deccan Education Society
Pune and Others. ..Respondents.

Mr. Rakesh P. Saroj for the Petitioner.
Mr. Mandar Limaye for Respondent No. 1.
Smt. P. J. Gavhane, AGP for Respondent-State (Respondent No. 6).

CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.

Date : December 8, 2022.

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P. C. [Per Sharmila U. Deshmukh, J.] :

1. This group of Petitions filed by the retired lecturers of Respondent No.2 College seeks directions to the Respondent Nos. 1 and 2 to pay the amount payable towards encashment of earned leave standing to their credit on the date of their superannuation with interest @21% p.a w.e.f their respective dates of retirement, in accordance with the resolution passed by the Respondent No.3 Management Council.

2. The Petitioners base their claim on Statute 424(C) of Savitribai Phule Pune University, which entitles the encashment of unutilized earned leave in balance on the date of superannuation subject to a maximum of 180 days. The claim raised by the Petitioners was not considered by the Respondent Nos.1 and 2 which compelled them to approach the Respondent No.4- Grievance Committee of the University, for redressal of their grievance. The Grievance Committee of the University, on consideration of respective claims of the petitioners, made recommendation to the University upholding entitlement of the Petitioners to claim the amount of encashment of earned leave. The University also adopted a resolution in the meeting of the Management Council and issued a communication to the College to

verify the amount and pay the same to the respective petitioners. As the directions issued were not complied by the Respondent Nos. 1 and 2, Petitioners have approached this Court seeking implementation of the resolution of the Respondent No.3- Management Council.

3. Heard learned counsel appearing for the parties. Learned counsel for the Petitioner submitted that the Grievance Committee has recommended the grant of leave encashment, after granting an opportunity of hearing to all the parties and in consonance with Statute 424(C). He further submits that the Respondent No.3- Management Council by its resolution dated 13th January 2016, have accepted the recommendation and necessary directions were issued to Respondent Nos.1 and 2 who are bound by the resolution of Management Council. In support of his submissions, learned counsel relied upon the decision of this Court (Aurangabad Bench) in the case of Madhav Natha Mali & Ors. v. the State of Maharashtra & Ors [Writ Petition No. 4899 of 2016 & group] dated 6th June 2017.

4. Learned counsel for Respondent Nos.1 and 2 has drawn the attention of this Court to the affidavit-in-reply dated 17th July 2017 filed by Respondent Nos.1 and 2 and submitted that at the most,

the Petitioners are entitled for the encashment of unutilised leave of 160 days and not for 180 days. He further contended that the Statute 424(C) has been repealed with effect from 2015 and as the Statute was not removed by the University from the statute book, the State Government has declined to reimburse the amount paid by the colleges towards the unutilised leave encashment. He further submits that the Respondent Nos.1 and 2 are unable to comply with the directives as they have no resources to pay the amount.

5. We have considered the rival submissions of the parties. Respondent Nos.1 and 2 have not challenged the resolution which has been passed by the Management Council of Respondent no.3 – University based on the recommendation of the Grievance committee and, hence in the petitions filed by the Petitioners seeking compliance of the resolution of the Management Council, the Respondent Nos.1 and 2 cannot be heard to dispute the payment or even the amount of unutilised earned leave, as is sought to be done. The recommendations of the Management Council of Respondent–University have attained finality and the Respondent Nos.1 and 2 are bound to comply with the same. Inability of the colleges and institutions, on account of the non

availability of resources, cannot be a ground to avoid the payment of amount which is legally due and payable to the Petitioners.

6. Learned counsel for the Petitioners has rightly relied upon the decision of this Court in Madhav Natha Mali (supra), in which this Court after considering the decision rendered by the apex Court in the matter of Khandesh College Education Society, Jalgaon another v. Arjun Hari Narkhede and others [2011(7) SCC 172], has held that the entitlement of the class of employees have been upheld by the Apex Court and the Petitioners therein cannot be denied the same benefit. In the present case, the Petitioners are also claiming the encashment of the earned leave under Statute 424(C) which was also considered by the Apex Court in the matter of Khandesh College Education Society (supra). The facts of the present case are identical to the facts in the case of Madhav Natha Mali (supra) and the Petitioners herein are, therefore, entitled to the reliefs which have been sought in the present petitions.

7. The submission of learned counsel for Respondent Nos.1 and 2 that Statute 424(C) of the University of Pune Statutes having been repealed with effect from 3rd February 2015, Respondent Nos.1 and 2 are not liable to pay amount under the said Statute, is

liable to be rejected as on the date of superannuation of the Petitioners, the Statute was very much in existence.

8. Considering the aforesaid, in our opinion, the Petitioners are entitled to the earned leave encashment. The question now remains is about the interest on the said amount. The Petitioners are seeking interest @ 21% p.a. w.e.f their respective dates of retirement. The entitlement of the Petitioners to the earned leave encashment arose on the date of their superannuation which was denied by Respondent Nos.1 and 2. Consequently, the Petitioners were forced to approach the Grievance Redressal Committee and in spite of the resolution of Management Council, the Respondent Nos.1 and 2 failed to comply, forcing the Petitioners to approach this Court. In our opinion, the Petitioners are entitled to interest, however, we are not inclined to grant interest @ 21% p.a. as claimed by the Petitioners but interest @ 9% p.a. from the date of the superannuation of the Petitioners till payment or realization.

9. Writ Petition are accordingly allowed. Respondent Nos.1 and 2 are directed to pay the monetary benefits towards the encashment of earned leave in accordance with the resolutions passed by the Management Council–Respondent No.3 alongwith

interest @9% p.a. from the date of their respective superannuation till payment or realisation, as expeditiously as possible, and preferably within a period of three months from today.

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]